

MONTANA LEGISLATIVE HISTORY

Chapter 464 ~~2001~~

Bill H _____ S 65 Original bill & history ____c

H. Committee on Education

Hearing Date(s) 3-7 ✓c

3-9 ✓c

_____c

_____c

Date Out _____c

S. Committee on Education & Cult. Res

Hearing Date(s) 1-22 ✓c

2-12 ✓c

_____c

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

January 22, 2001

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HEARING ON SB 65

Sponsor: SEN. ALVIN ELLIS, SD 12, Red Lodge

Proponents: Lance Melton, Montana School Boards Association
SEN. DUANE GRIMES, SD 20, Clancy
Dave Puyear, Montana Rural Education Association
Kip Smith, Self, Jefferson County
Susan Schmitt, Self, Montana City
Bill Spires, Self, Jefferson County
Madalyn Quinlan, Office of Public Instruction
Loran Frazier, School Administrators of Montana
Darrin Grenfeld, Self
Julie Busch, Lamotte School, Gallatin County
Rachel Vielleox, County Superintendent, Missoula

Opponents: Rob Collins, Self, Jefferson County

Opening Statement by Sponsor:

SEN. ALVIN ELLIS, SD 12, Red Lodge, presented SB 65. He summarized the background for this legislation. He cited the present law when a child crosses district lines to attend an out of district school, then the school district of residence or the parent pays tuition, with the exclusion of a child that crosses a county or state boundary. In that case the state has been responsible for the cost.

SEN. ELLIS added that this bill would be a compromise that would address the unfairness of the issue as well as the legality of the state's practice of paying tuition to students that cross county lines. Since the Constitution requires the state to distribute it's share of cost equitably this bill would eliminate the legal issue of unconstitutionality.

SEN. ELLIS called attention to the fiscal note and the amendments in the committee packets. He remarked that this bill, with the amendments, will have a positive fiscal impact. He maintained that one of the weaknesses in the bill occurs when the legislation allows tuition payments to rise above the base funding level.

This measure will eliminate state payment of tuition for children who cross county lines. Tuition would now be paid under different uniform circumstances regardless of the line the child crosses thus requiring the parent or district to pay tuition.

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SEN. ELLIS reiterated that this bill would entice schools to participate with lower tuition levels. The tuition rate would become uniform across the state.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 15}

Proponents' Testimony:

Lance Melton, Montana School Boards Association, stood in support of SB 65 and submitted written testimony, EXHIBIT(eds17a01). *exceeds 10 pages - can be found at*

SEN. DUANE GRIMES, SD 20, Clancy, explained the history of SB 65. *historical Society*
He summarized that many of the issues were quite complex due to the lack of knowledge that was needed to get to the core of the issue and understand where compromises could be made. He explained that The Education Forum, which represents a diversity of interests, took over. They looked at the bill with two issues in mind. One involved more choice between the public school system and the other was in regard to trying to solve the constitutional problem concerning students crossing district lines. This bill would allow school districts to provide education to those students, across county lines, establish a minimum that those parents would have to pay and also give an incentive to the receiving school district to waive the tuition without violating other equalities.

Dave Puyear, Montana Rural Education Association, endorsed SB 65, testifying that his association had worked on the interim committee. He highlighted several issues. He declared this to be a measure that had a wide variety of groups working on this project. He purported that SB 65 would be a compromise that would save the state and it would have a positive fiscal impact on the state.

Skip Smith, speaking for himself, rose in support of SB 65. He thanked the committee for crafting a bill that he believes effectively addresses the balance between school choice, parental responsibility and local control.

Susan Schmitt, Montana City, speaking for herself, begrudgingly spoke in support of SB 65. She suggested that the bill be modified when dealing with tuition. She suggested that the tuition be based upon the taxable value of a home owner's property multiplied by the high school and/or elementary mill level in the school district of choice. She felt that tuition is just another tax adding to the tax burden already being shouldered by the property owner.

{Tape : 1; Side : A; Approx. Time Counter : 15 - 32}

She stated that the rest of the bill seemed fair and repeated that the change would benefit parents.

Bill Spires, representing himself, came before the committee as a reluctant proponent of SB 65. He encouraged the legislature to include parents earlier in the process since the bill is so complicated. He echoed previous testimony of this being a compromise bill and encouraged the committee to take into consideration the testimony of **Susan Schmitt** regarding a fairer way to balance the tuition rate. **Mr. Spires** referred to provisions in existing law that are reflected in Section 3, of the bill. He encouraged the committee to look into the future and consider the social impact this bill would have upon communities.

Madalyn Quinlan, Office of Public Instruction, endorsed SB 65. While indicating the positive aspect of the bill which indicates that the entity that places a student, pays for the student. She explained that when the state makes a placement then the state pays the tuition. When the district would make a placement then the district is responsible and when parents choose the placement then the parents pay the tuition. **Ms. Quinlan** reported that tuition rates would be set for the over base portion of the budget, cutting tuition in half making it more affordable for those paying the tuition.

She voiced her concerns regarding the definitions of a geographic condition. The bill provides that the County Transportation Committee determine when a geographic condition exists and **Ms. Quinlan** expressed her concern regarding the delegation of this decision to the County Transportation Committee. She also requested that the committee try to tighten this down by defining a geographic condition.

Ms. Quinlan stated that there would be a technical amendment offered concerning page 9 line 22.

Loran Frazier, School Administrators of Montana, indicated this bill would be a good compromise. It would give the local school boards the opportunity to decide if they want to charge tuition. For the record, **Mr. Frazier** stated that they support the gray bill (Montana School Boards Association's analysis).

Darrin Grenfeld, Montana City, representing himself, spoke in support of SB 65.

Julie Busch, Supervising Teacher of Lamott School, east of Bozeman, avowed that she supported SB 65 but with several concerns. She stated that the mandatory tuition statute is affecting her school. The school is a feeder school to the Bozeman high school. Due to a land transfer dispute, her district is responsible for paying tuition for students that have never attended the school. Section 20-5-321, Paragraph C states that Bozeman would have to mandatorily accept those students because they have a high school sibling. She encouraged the committee to think of the repercussions it would have for small schools.

Rachel Vielleox, Missoula County Superintendent of Schools, remarked that she served on the Education Forum Committee and stated that the bill, as amended, is a fair representation of what the committee approved. She encouraged the committee to continue to include the county superintendents in the tuition process.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 20}

Opponents' Testimony:

Rob Collins, spoke as a resident of Jefferson County, testified against SB 65. **Mr. Collins** stated it is unfair to parents and children. He felt is a compromise on the backs of the parents who pay twice, through taxes and tuition. He questioned why he should pay taxes to Jefferson County when his children do not attend school in that county. He felt that this bill eliminates school choice for everyone but the very rich.

Informational Testimony: None

Questions from Committee Members and Responses:

SEN. MIGNON WATERMAN mentioned that this bill would allow some districts to waive tuition for some but not for all. She stated that this has always been an issue and asked **Mr. Melton** to walk through the legality in meeting the equity test when waiving tuition for some and not for all. **Mr. Melton** responded that there are different issues involving equity. The issue has to do with a constitutional provision that specifically says the state's share of money must be distributed equitably. The waiver of tuition is local funding and there is no state constitutional provision that talks about equitable wavering of tuition at a local level.

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SEN. ED BUTCHER inquired of Mr. Collins the difference in taxes if he was living in the Helena District versus where he is living now. Mr. Collins stated that he lived in a rural area. SEN. BUTCHER suggested that Mr. Collins had made a choice when he moved into another county, knowing that this dilemma would occur. Mr. Collins insisted that he was not aware of a possible problem since the mandatory waiver was in effect, at that time.

SEN. BUTCHER questioned whether Mr. Collins would have the option of petitioning his land into the Helena district. Mr. Collins acknowledged this would be a solution but would take time.

{Tape : 1; Side : B; Approx. Time Counter : 20 - 32}

SEN. JACK WELLS asked the sponsor how this bill supports school choice. SEN. ELLIS stated that it does support school choice. Parents may still be required to pay tuition but this has always been the case. The bill reforms the way it works.

SEN. WELLS asked Julie Busch to clarify the paragraph she referred to in her testimony. Ms. Busch responded that it was under Section 20-5-321, Paragraph C. She stated that it is stated on page 5 of the rough draft.

SEN. JIM ELLIOT, asked the sponsor to comment on the issue of geographical hardship. SEN. ELLIS suggested this should be worked on in committee since the Supreme Court stated that we have allowed the county superintendents legislative discretion in determining the definition of geographical hardship.

SEN. ELLIOT asked Mr. Melton to clarify whether school boundaries are the same as county boundaries or if they can overlap. Mr. Melton acknowledged there are cases of overlap and asked if the question could be redirected to Madalyn Quinlan. Ms. Quinlan stated that there are 66 of 450 school districts that have territory in at least two counties.

CHAIRMAN GLASER requested that Susan Schmitt recap her feelings, as a parent, concerning this bill. Mrs. Schmitt summarized that she was informed at the time they built their home that their children would be able to attend Helena High School. She repeated that she has paid her taxes and questioned why she should have to pay more.

SEN. BUTCHER remarked that it would seem that Ms. Schmitt would like to have the elementary children in a small school yet want

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the high school students to go to Helena High School and inquired into why she was not petitioning to transfer that land into the Helena High School District. Mrs. Schmitt responded that her taxes would not be that much higher if she lived in Lewis and Clark County. She also stated that petitioning has recently been declared unconstitutional so would not be an option at this time.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 20}

Closing by Sponsor:

SEN. ELLIS closed on SB 65. He summarized that this is a good piece of legislation that enhances choice. He repeated that the bill is a compromise and summarized the positive aspects of the bill.

{Tape : 2; Side : A; Approx. Time Counter : 20 - 23}

CHAIRMAN GLASER announced his intention to put SB 65 into sub-committee. He added that the sub-committee would consist of SEN. WELLS, SEN. DON RYAN, and SEN. ELLIS. SEN. WELLS was appointed chairman.

HEARING ON SB 218

Sponsor: SEN. DON RYAN, SD 22, Great Falls

Proponents: Loran Frazier, School Administrators of Montana
Linda Brannon, Montana Association of Business
Officials
Lance Melton, Montana School Boards Association
Dave Puyear, Montana Rural Educators Association
Eric Feaver, Montana Education Association/Montana
Federation of Teachers
Donna Maddox, Flathead County Superintendent of
Schools

Opponents: None

Opening Statement by Sponsor:

SEN. DON RYAN, SD 22, Great Falls, opened on SB 218. SB 218 would authorize the trustees of a school district, after determining that the district's tuition fund is inactive and will no longer be used, to close the fund by transferring any cash or fund balance into the district's miscellaneous programs fund.

portion of the spending formula could be severed from the rest of the bill he would support the bill. **Eddye McClure** informed him that there was no severability clause and wondered if he would want to severe parts of the bill.

SEN. ELLIS wondered if the bill could stand alone from the rest of the funding formula. **Ms. McClure** stated that the funding formula was being amended. **SEN. ELLIS** articulated that he would agree to the bill as is.

Vote: **SEN. SHEA'S** motion that SB 94 DO PASS AS AMENDED carried 13-1 with Wells voting no.

EXECUTIVE ACTION ON SB 65

SEN. WATERMAN wondered if a new fiscal note had been received on SB 65. **CHAIRMAN GLASER** informed the committee that the budget director had sent a letter informing the committee that bills were not to be held in committee awaiting a revised fiscal note.

Eddye McClure submitted a grey bill, **EXHIBIT(eds35a04)**, which included the amendments as adopted during executive action on February 7, 2001. **Ms. McClure** explained the amendments (**SB006501.ace**), **EXHIBIT(eds35a05)**, that were included in the bill. She questioned the cost of transportation and who would be liable for it.

Kathy Fabiano informed the board that the cost of transportation that the parent would be liable for would be the local share. The state would reimburse the district that would be transporting the student. Any costs that would exceed the state, county and local levy, would be absorbed by the parent under this amendment (**SB006501.ace**) **EXHIBIT (5)**.

Eddye McClure questioned whether the parent would pay tuition or both tuition and transportation costs. **Kathy Fabiano** stated that the decision would lie with the committee.

SEN. ELLIS felt transportation was not an issue under the title of mandatory acceptance by the other school. **SEN. WELLS** voiced concerns with "and any transportation" because it would seem like the statute would tell the districts they could now assess the parent for transportation.

CHAIRMAN GLASER reminded the committee that SB 65 had a DO PASS AS AMENDED out of the committee on February 7, 2001.

Motion/Vote: SEN. ELLIS moved TO RECONSIDER PREVIOUS ACTION OF A DO PASS MOTION AS AMENDED ON SB 65. Motion carried unanimously.

Motion/Vote: SEN. ELLIS moved TO STRIKE THE WORDS, "AND ANY TRANSPORTATION". Motion carried unanimously.

Eddye McClure pointed out several changes that dealt with SEN. RYAN'S amendments and also clarified some editing changes.

CHAIRMAN GLASER asked for an opinion from Kathy Fabiano regarding the fiscal note. Ms. Fabiano explained that there would be no fiscal impact in fiscal year 2002. Adding all the numbers the state would pay \$1,851,094 for the GTB. Reducing that by the tuition costs the state currently pays, the net increases would be \$493,527 in fiscal year 2003.

{Tape : 2; Side : A; Approx. Time Counter : 15 - 32}

Ms. Fabiano explained that the reason that there would be no payment in 2002 is because tuition is paid one year in arrears.

SEN. WELLS explained that he had initially resisted state-placed students because of the cost, but that issue is consistent with the rest of the bill. This position would be indefensible and so he supports this issue.

Motion/Vote: SEN. WATERMAN moved that SB 65 DO PASS AS AMENDED. Motion carried unanimously.

CHAIRMAN GLASER suggested phasing SB 312 next year which would mean it would not impact anyone for two years. In seven years the system would be in place. SEN. ELLIS responded that SB 312 would have a tremendous impact for smaller districts as well as large because of their tremendous disparities.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 7}

Dianne McGurran submitted written testimony. EXHIBIT(edh52a22)

EXHIBIT(edh52a23) The petition of William and Lynette Burgan to transfer land from Red Lodge School District #1, to Roberts School District #5 and the ruling was submitted as an exhibit.

Questions from Committee Members and Responses:

Closing by Sponsor:

SENATOR ALVIN ELLIS said he had a respect for everyone who testified. He presented a technical amendment to his bill. EXHIBIT(edh52a24) SB011105.aem He thought he had it on the bill when it left the Senate, but it was an omission. He thinks a lots of the arguments heard during the hearing regard the transfer of one or two properties, but in reality, this bill affects more than that. Many of the arguments heard may have been directed at this committee making that decision. The committee does not have the time to make the decision in each case where people want one to choose to move their property to another school district. There was mention made that this decision would be made for some other reason than educational benefit. The bill states clearly that the only criteria that can be evaluated is educational benefit. Certain things that affect educational benefits must be considered and they are in (7) under Section 1 on page 3. He thinks that a lot of the crisis talk that was heard about how this bill will affect Vaughn and Power was true prior to equalization, but as the committee knows, with equalization when property moves like they said it does and not a substantial number of students move, it changes the GTB in both areas. Prior to equalization, one district could have a substantial benefit over another district if it was a property rich district. The committee heard comments that the kids can already go to school in Power, so there is no difference with the bill. The difference is that their folks will be able to vote for people on the school board where they attend and they will pay taxes to that district. It makes a lot of sense to him. This country was instituted to protect the rights of the minority and that is exactly where the bill is directed. If schools and parents are going in the same direction, education happens.

HEARING ON SB 65

Sponsor: SENATOR ALVIN ELLIS, JR, SD 12, Red Lodge

Proponents: Rachel Vielleux, Missoula County Superintendent of Schools

Channing J. Hartelius, Attorney
Kathy Fabiano, OPI
Dave Puyear, MREA
Catherine M. Swift, Browning Public Schools
Lance Melton, MSBA

Opponents: None

Informational: Bruce Messinger, Superintendent of
Helena Public Schools

Opening Statement by Sponsor:

SENATOR ALVIN ELLIS, JR, SD 12, Red Lodge said he presents the bill at the request of the Education Interim Committee. This is a problem that has faced Montana for a good long time. In previous sessions there has been a bill dealing with state tuition. Currently the law says that if kids go out of district, but also out of county to receive an education, the state pays the tuition. If they go out of district, but not out of county, the state does not pay the tuition. It is an obvious inequity. He has struggled over placing state-placed children in the bill and decided that the only way it would be fair was to use the same criteria that is in this bill to address those children. As a result, instead of the bill saving around \$225,000, it ends up costing about half a million dollars, because it addresses the state-placed children also. He explained the handout.

attached EXHIBIT(edh52a25) The bill changes the way tuition works in the system. Prior to the bill, tuition had to go into the below base area, the GTB area of funding. The tuition then reduced GTB that is received from the state. This bill proposes to put that money in above the base funding level, between the 80% and 100% level. Therefore, the tuition just reduces local district levies.

Proponents' Testimony:

Lance Melton, MSBA, said the associations have gone to the table and this bill is a solution to a Montana problem. SB 65 has some key components. The legislative auditors office wrote a report in 1999 saying that paying tuition for kids that cross a county line when the state doesn't pay it for kids crossing a district line is unconstitutional. Part of the bill is the \$1.8 million not paid in tuition for kids who cross the county line that is paid under current law. There is an inclusion to pay tuition for kids who have to go to a different district because of a geographic barrier. This includes a bus ride in excess of 60 miles or 40 miles on a dirt road. There are parents, at present,

when a district doesn't pay and when the state doesn't pay, parents pay. This bill cuts that tuition in half. In order to do that, the tuition had to be moved to above base. The bill adds state accountability for state placements decisions. The fiscal note on the bill represents the half a million dollar unfunded mandate that exists in districts at present. The bill gives the school district the incentive to waive tuition for parents without losing the right to charge it when another district is making the payment. He handed out a proposed amendment to the bill by Jon Metropoulos on behalf of the Browning School District. He said he doesn't feel it was necessary, but he would leave that decision to the committee.

EXHIBIT(edh52a26) - *attached*

Dave Puyear, MREA, said they stand in strong support of the bill.

Rachel Vielleux, Missoula County Superintendent, said she was representing county superintendents across the state. She served on the committee that drafted the changes to the bill. They are in strong support of the bill.

Cathy Fabiano, OPI, said they have participated in the long process that crafted the bill and they are in strong support of the bill.

Bruce Messinger, Superintendent of Helena Public Schools, said he was involved, also, with the design of the bill. The bill does create some new challenges for the Helena district and the neighboring districts. It seems like the most reasonable solution and he stands in support of the bill.

Kip Smith said he is a resident of north Jefferson County and he has been following this issue for three sessions. He said this is an excellently crafted bill. This bill provides the balance that has been sought between school choice, local control and parental responsibility.

Questions from Committee Members and Responses: None

Closing by Sponsor:

SENATOR ELLIS said that in regards to the amendment he believes it is already covered in the bill, but he will defer to the committee to make that decision.

take the child 20 miles to school, the parent is paid 21 cents for 14 miles. The price of everything goes up and the parent is barely meeting expense. He checked other states around Montana. In Wyoming they pay 29 cents a round trip or however many trips need to be made for a sedan. They pay 32 cents for a pickup and a station wagon. They pay for both round trips. Idaho is paying 34.5 cents for each round trip. North Dakota was paying 40 cents a mile for one way but they are in session right now and they might lower it to 25 cents for total mileage. The bill is trying, for the more than 1,800 contracts in the state, to raise the 21 cents.

Questions from Committee Members and Responses:

REPRESENTATIVE LEHMAN asked the SPONSOR what the vote was when the bill came out of the Senate. The SPONSOR said he believed it was pretty much unanimous.

REPRESENTATIVE OLSON had a question for Connie Erickson. He said the committee had a bill similar to this one and he wanted to know what happened to it. Connie Erickson said it was tabled, but it had bus money in it also.

REPRESENTATIVE BOB LAWSON asked the SPONSOR to tell him about the room and board issue. The SPONSOR asked that Connie Erickson explain it in executive action.

Closing by Sponsor: None

EXECUTIVE ACTION ON SB 65

Motion: REP. GALVIN-HALCRO moved that SB 65 BE CONCURRED IN.

Discussion:

Connie Erickson explained the amendments that were handed out. It is a technical amendment to make sure that the bill does what the Senate wanted it to do. The bill was drastically amended by the Senate and this amendment was inadvertently left off.

EXHIBIT(edh54a03) SB006502.ace

Motion/Vote: REP. MANGAN moved that AMENDMENT TO SB 65 SB006502.ACE BE ADOPTED. Motion carried unanimously.

Motion: REP. GALVIN-HALCRO moved that SB 65 BE CONCURRED IN AS AMENDED.

Discussion:

Connie Erickson explained a conceptual amendment offered by the Browning Public Schools. They wanted to say that the parent or guardian would be responsible for tuition and transportation if a sibling wishes to attend a school outside the district of residence because a sibling has to attend school outside the district of residence. OPI says it isn't necessary but it is okay to put it in the bill.

Motion/Vote: REP. MANGAN moved that CONCEPTUAL AMENDMENT TO SB 65 BE ADOPTED. Motion carried unanimously.

Motion: REP. MANGAN moved that SB 65 BE CONCURRED IN AS AMENDED.

Discussion:

REPRESENTATIVE MANGAN said that he, along with others present, was on the Interim Education Committee and worked on a lot of bills. This was the main bill and a lot of work was put into the bill. Obviously the Senate put a great deal of work into it also. This is a good bill and the committee needs to pass it.

REPRESENTATIVE GALVIN-HALCRO called for the question.

Vote: Motion that SB 65 BE CONCURRED IN AS AMENDED carried 17-1 with Waddill voting no.

REPRESENTATIVE JOAN ANDERSEN will carry the bill on the floor.

EXECUTIVE ACTION ON HB 121

REPRESENTATIVE JOE MCKENNEY moved to reconsider HB 121. Motion carried unanimously.

Motion: REP. PETERSON moved that HB 121 DO PASS.

Discussion:

Motion: REP. OLSON moved that AMENDMENTS TO HB 121 HB012102.ACE BE ADOPTED.

Discussion:

Connie Erickson passed out REPRESENTATIVE OLSON's amendments.